



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/21/08	Bill No:	AB 2297
Tax:	Alcoholic Beverage	Author:	Saldana
Related Bills:			

BILL SUMMARY

This bill would require the Board to calculate the total amount of all alcoholic beverage surtaxes, interest, and penalties that are or would be collected as a result of a reclassification of any alcoholic beverage from beer to a distilled spirit, as specified. The Board would also be required to provide an annual revenue analysis to the Legislature and Legislative Analyst's Office (LAO) regarding such reclassifications.

ANALYSIS

CURRENT LAW

Under current law, Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law impose the following taxes and surcharges on the sale of beer and distilled spirits:

	<u>Tax</u>	<u>Per Gallon Surcharge</u>	<u>Total</u>
Beer	\$0.04	\$0.16	\$0.20
Distilled spirits (100 proof)	\$2.00	\$1.30	\$3.30
Distilled spirits (100+ proof)	\$4.00	\$2.60	\$6.60

For purposes of the Alcoholic Beverage Tax Law, the terms "distilled spirits" and "beer" are defined in Sections 23005 and 23006, respectively, of the Business and Professions Code to mean the following:

- **Distilled spirits** - an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.
- **Beer** - any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine.

The alcoholic beverage tax is paid to the Board and transmitted to the State Treasurer for deposit in the State Treasury to the credit of the Alcohol Beverage Control Fund. Moneys in that fund are drawn for refunds or transferred to the General Fund. The surtax is paid to the Board, but deposited directly into the General Fund.

PROPOSED LAW

This bill would amend Section 32230 of the Revenue and Taxation Code to require, for calendar years beginning on and after January 1, 2009, the Board to calculate, on a quarterly basis, the total amount of all surtaxes, interest, and penalties that are or would be collected as a result of the reclassification of any alcoholic beverage from a beer to a distilled spirit. The calculation would include any reclassification made by the Board in 2008.

The Board would also be required to provide the calculated amounts to the Legislature and the LAO in the form of an annual revenue analysis beginning on and after January 1, 2009. The report would include, but not be limited to, the following:

- The total amount of all surtaxes, interest, and penalties that are or would be collected by the Board as a result of a reclassification of any alcoholic beverage from a beer to a distilled spirit, and
- A projection of the amounts that would be collected in the following year as a result of such a reclassification.

This bill also contains Legislative intent language providing that all surtaxes, interest, and penalties as calculated by the Board as a result of the reclassification of any alcoholic beverage from a beer to a distilled spirit would be transferred, upon appropriation by the Legislature, in the following manner:

- 20% to the Department of Alcoholic Beverage Control to enhance enforcement of laws prohibiting furnishing alcohol to minors. At least 50 percent of the funds received shall be distributed to local law enforcement agencies.
- 20% to the State Department of Alcohol and Drug Programs to, among other things, conduct research on the impact of alcohol marketing on underage drinking, conduct a statewide media campaign to alert the public to the risks of underage drinking and address the impact of alcohol marketing on youth, assess and enhance youth alcohol recovery programs in the state, and to create a report to the Legislature on the research conducted by the State Department of Alcohol and Drug Programs regarding alcohol and minors.
- 60% to county alcohol programs to establish youth prevention and recovery centers and to supplement existing resources dedicated to funding youth alcohol treatment, recovery, and prevention programs.

This bill would become effective January 1, 2009.

IN GENERAL

Upon the repeal of prohibition in 1933 and the return of the legal sale of alcoholic beverages in California, taxation and regulation of the manufacture, distribution, and sale of alcoholic beverages were given to the Board. In 1955, an amendment to the State Constitution became effective removing the duty of regulating the manufacture and sale of alcoholic beverages from the Board and placing it in the new Department of Alcoholic Beverage Control (ABC). The Board retained the duty to assess and collect any excise taxes imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

Article XX, Section 22 of the California Constitution provides, in part:

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof.

[¶] . . . [¶]

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

Proposed Regulation Changes. More recently, the Board was petitioned by community groups to revise the Alcoholic Beverage Tax Regulations related to distilled spirits. In a letter dated October 25, 2006, Friday Night Live, Students Making a Community Change and the California Youth Council filed a petition pursuant to Government Code Section 11340.6, requesting the Board adopt a regulation to tax flavored malt beverages as distilled spirits and/or amend Regulation 2530. The Board is authorized to promulgate regulations relating to the administration and enforcement of the Alcoholic Beverage Tax Law pursuant to Revenue and Taxation Code Section 32451.

In response to the petition, the rulemaking process was initiated to consider a series of regulations to clarify the definition of distilled spirits, and create a rebuttable presumption that non-wine alcoholic beverages, like flavored malt beverages, are distilled spirits, not beer, if the alcoholic beverage contains 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products. Further, the regulations provide a procedure for rebutting the presumption. The Legislative Counsel and the ABC respectively opined and commented on the Board's authority to adopt the regulations. The Board subsequently adopted the regulations on a 3-2 vote and as required by the Administrative Procedures Act, the regulations were transmitted to the Office of Administrative Law (OAL) for review. Based on the feedback from the OAL, the Board subsequently withdrew the regulations in order to address and clarify certain technical issues with the intent of resubmitting the regulations to OAL. The documents related to the regulatory process, including a copy of the Board's review schedule, initial discussion paper, and OAL and ABC documents on this issue can be found at <http://www.boe.ca.gov/sptaxprog/alcoholicbeverage.htm>.

In the most recent development, on March 19, 2008 the Board approved amendments to the proposed regulations and will consider adoption of the regulations at the April 8, 2008 Board meeting. If the regulations are adopted by the Board, they will be resubmitted to the OAL for review.

BACKGROUND

In 2005, the Legislature passed Assembly Bill 417 (Aghazarian), which would have revised the definition of beer to include any alcoholic beverage that qualifies as a malt beverage under specified federal law. However, that measure was vetoed by the Governor. The Governor's veto message states, in part, the following:

"I encourage all interested parties, particularly health professionals, law enforcement and the producers of flavored malt beverages, to use this opportunity for public debate and serious consideration of the policy issues surrounding this beverage."

In 2006, Assembly Member Saldana introduced AB 2013 (Saldana) which would have required the Board to calculate the total amount of all surtaxes, interest, and penalties collected as a result of the reclassification of any alcoholic beverage from a beer to a distilled spirit in order for those amounts to be transferred to the Youth Alcohol Problem Prevention Fund. AB 2013 died in the Assembly Committee on Governmental Organization. Last year, Assembly Member Saldana introduced AB 345, which was similar to AB 2013, but it also died in the Assembly Committee on Governmental Organization.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the authors and is intended to calculate projected increased alcoholic beverage tax revenue in order to better allocate funding to enhance laws related to the unlawful distribution of alcoholic beverages to minors and to educate the public regarding the risks associated with underage consumption of alcohol.
- 2. The Board's calculation may not encompass the information intended.** This bill generally provides that the Board's calculation be based on amounts that are or would be collected as a result of reclassification of any alcoholic beverage from a beer to a distilled spirit. This calculation would provide the amount of revenue that would be collected if there is a reclassification of an alcoholic beverage, as described.

The current bill language is rather vague and provides that the Board's calculation be related to the reclassification of "any alcoholic beverage" from a beer to a distilled spirit. This could be interpreted to mean that the Board would be required to estimate the additional revenues that would be received for reclassifying every beer product, including microbrewery brands, as distilled spirits. Although staff assumes the author's intent is to capture flavored malt beverages, it appears that the current version of the bill requires the Board's calculation to include a large universe of products.

If the author intends for the Board to continue to calculate the total amount of surtaxes, interest and penalties after an alcoholic beverage has been reclassified from a beer to a distilled spirit and that the calculation target a specific alcoholic beverage, then that intent should be clarified.

- 3. How much of the surtax would be included in the report?** This bill would require the Board to calculate the total amount of all surtaxes, interest, and penalties that would be collected as a result of the reclassification of any alcoholic beverage from a beer to a distilled spirit. This language could be interpreted to mean either of the following:

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- The entire one dollar and thirty cents (\$1.30) per gallon surtax on distilled spirits.
- Only one dollar and fourteen cents (\$1.14) for each gallon of alcoholic beverage reclassified, which is the difference between the distilled spirits surtax (\$1.30) and beer surtax (\$0.16).

Board staff recommends amending the bill to clarify the author's intent.

- 4. Does the Board currently capture the information necessary to administer this bill?** In order for the Board to calculate the amount of all surtaxes, interest, and penalties for a specific alcoholic beverage that would be collected as a result of a reclassification, the alcoholic beverage tax return would have to be revised to capture pertinent data regarding the specific alcoholic beverage that would be reclassified. The Board's current beer tax return does not distinguish between different categories of beer products.

COST ESTIMATE

The Board is considering adoption of Regulations that could result in a change in taxation of alcoholic beverages. If the Board adopts the Regulations and the OAL approves them, then the Board will pursue a budget augmentation for the associated costs. Costs specific to this bill's requirements will be separately estimated and are pending. Administrative costs would be affected if the Board were to track a large number of beer products and sales.

If the Board does not adopt the Regulations, or if the OAL does not approve them, then there should be no costs related to the Board's calculations. This bill is contingent on a reclassification – if there is no reclassification, there will be no calculation and no subsequent transfer of funds.

REVENUE ESTIMATE

This measure would not require the reclassification of any alcoholic beverage from a beer to a distilled spirit, but instead would require a calculation of the total amount of surtaxes, interest, and penalties that are or would be collected as a result of reclassification. Since there are several unknown variables related to reclassification, such as types of products currently classified as beer that may be reclassified as a distilled spirit, and market and industry reactions, a revenue estimate could not be prepared at this time.

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